

1 **Timothy J. Conway**, OSB No. 851752 (Lead Attorney)

Direct Dial: (503) 802-2027

2 Facsimile: (503) 972-3727

E-Mail: tim.conway@tonkon.com

3 **Ava L. Schoen**, OSB No. 044072

Direct Dial: (503) 802-2143

4 Facsimile: (503) 972-3843

E-Mail: ava.schoen@tonkon.com

5 **TONKON TORP LLP**

1600 Pioneer Tower

6 888 S.W. Fifth Avenue

Portland, OR 97204

7 Attorneys for Debtor

8
9 UNITED STATES BANKRUPTCY COURT

10 DISTRICT OF OREGON

11 In re

12 Peak Web LLC,

13 Debtor.

Case No. 16-32311-pcm11

**DEBTOR'S MOTION FOR ORDER
AUTHORIZING PAYMENT OF
PRE-PETITION WAGES, SALARIES,
COMPENSATION, EXPENSES,
BENEFITS, AND RELATED TAXES,
AND TO CONTINUE EMPLOYEE
BENEFITS POST-PETITION**

EXPEDITED HEARING REQUESTED

17 Peak Web LLC, debtor and debtor-in-possession ("Debtor"), moves this Court
18 for entry of an order authorizing payment of prepetition wages, salaries, compensation,
19 expenses, benefits, medical co-payments, and related taxes, and to continue employee
20 benefits post-petition. In support of this Motion, Debtor incorporates the statements
21 contained in the Declaration of Mark Calvert of Cascade Capital Group in Support of First
22 Day Motions ("First Day Declaration") filed contemporaneously herewith, and respectfully
23 further states as follows:

24 1. On June 13, 2016 (the "Petition Date"), Debtor filed a voluntary
25 petition for relief under Chapter 11 of Title 11 of the United States Code.

2. Debtor has continued in possession of its property and is continuing to operate and manage its business as debtor-in-possession pursuant to Sections 1107(a) and 1108 of Title 11 of the United States Code.

3. No request has been made for the appointment of a trustee or examiner, and no official committee of unsecured creditors has been appointed in Debtor's case as of this time.

4. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

5. Debtor is a managed-service company that provides the servers, storage, network, datacenter, and staff for some of the largest online businesses. Debtor is essentially a "cloud" service provider for companies that do not want to build out an operations department to run all of these elements themselves.

6. Debtor's employees are paid every other Friday. The next regular payroll date is June 17, 2016, covering the pay period May 30, 2016 through June 12, 2016. Prior to the Petition Date, employees were paid their wages through May 29, 2016. Because the Petition Date is June 13, 2016, Debtor has incurred unpaid pre-petition obligations for wages, salaries, expenses, commissions, and other employment compensation and benefits for the period May 30, 2016 to the Petition Date.

7. Attached hereto as **Exhibit 1** is a list of the approximate pre-petition amounts to be paid each individual on the next regular payroll date of June 17, 2016. Debtor will not pay, and does not request authority to pay, pre-petition amounts to any person that would be more than the \$12,475 amount of their priority claim as provided by 11 U.S.C. §§ 507(a)(4) and (a)(5).

8. Debtor requests that this Court enter an order, pursuant and subject to Sections 105(a) and 507(a)(4) and (a)(5) of the Bankruptcy Code, authorizing Debtor to

(a) pay to or for the benefit of its employees incurred but unpaid pre-petition wages, salaries, commissions, reimbursable employee business expenses, employee medical co-payments, and other compensation on the regularly scheduled post-petition pay dates; (b) pay any and all local, state, and federal withholding and payroll-related taxes relating to pre-petition periods, including, but not limited to, all pre-petition withholding taxes, social security taxes, Medicare taxes, and unemployment taxes; (c) pay all court-ordered wage garnishments, including, but not limited to, child support and tax garnishments; (d) make accrued pre-petition contributions or payments directly on account of employee benefits; (e) continue to honor, and pay as and when appropriate, earned but unused vacation and other benefits accrued pre-petition; and (f) continue existing employee benefits post-petition.

9. To protect the value of Debtor's business as a going concern, Debtor must honor its pre-petition wage obligations. A failure to pay accrued wages, salaries, commissions, expenses, benefits, medical co-payments, and other related obligations, or even a delay in such payment, would have a significant negative impact on worker morale and some employees may not report to work, thereby impairing Debtor's ability to continue operations.

10. Debtor believes the requested relief will enable it to maintain its current operations without interruption and, at the same time, maintain worker morale. Debtor's employees are vital to its efforts to reorganize and provide essential services, without which Debtor would be unable to function. Without the relief requested, Debtor's ability to preserve its assets for the benefit of all creditors and equity security holders, and Debtor's ability to successfully reorganize, will be severely impaired.

11. It is in the best interests of Debtor and its creditors that the above-described wages, salaries, compensation, payroll taxes, and employee benefits be paid, for the reason that such payments will enable Debtor to continue to operate its businesses in the ordinary course.

1 12. Pursuant to Rules 6003(b) and 6004(h) of the Federal Rules of
2 Bankruptcy Procedure ("Bankruptcy Rules"), Debtor seeks (a) immediate entry of an order
3 granting the relief sought herein; and (b) a waiver of any stay of the effectiveness of such an
4 order. Bankruptcy Rule 6003(b) provides, in relevant part, that "[e]xcept to the extent that
5 relief is necessary to avoid immediate and irreparable harm, the court shall not, within
6 21 days after the filing of the petition, issue an order granting * * * a motion to pay all or part
7 of a claim that arose before the filing of the petition." However, where the failure to grant
8 any such requested relief would result in immediate and irreparable harm to Debtor's estate,
9 the Court may allow Debtor to pay all or part of a claim that arose before the Petition Date
10 prior to the 21st day following the Petition Date. Bankruptcy Rule 6004(h) provides that
11 "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed
12 until the expiration of 14 days after entry of the order, unless the court orders otherwise."

13 13. As set forth above, payment of the prepetition wages, salaries,
14 compensation, expenses, benefits, medical co-payments, and related taxes is necessary to
15 prevent immediate and irreparable damage to Debtor's operations and its ability to operate in
16 the ordinary course. Accordingly, ample cause exists to justify (a) the immediate entry of an
17 order granting the relief requested herein; and (b) a waiver of the 14-day stay imposed by
18 Bankruptcy Rule 6004(h), to the extent it applies.

19 WHEREFORE, Debtor respectfully requests that the Court enter an order,
20 substantially in the form attached hereto as **Exhibit 2**, granting the relief requested in the
21 Motion and such other and further relief as this Court deems just and proper.

22 DATED this 13th day of June, 2016.

23 TONKON TORP LLP

24 By /s/ Ava L. Schoen
25 Timothy J. Conway, OSB No. 851752
26 Ava L. Schoen, OSB No. 044072
Attorneys for Debtor

EXHIBIT 1

APPROXIMATE AMOUNTS TO BE PAID EACH INDIVIDUAL

APPROXIMATE AMOUNTS TO BE PAID EACH INDIVIDUAL

Employee ID #	Amount Owning
00001606130	\$4,442.24
00001543941	\$5,076.72
00001338293	\$4,231.04
00001654846	\$4,700.05
00001721409	\$5,923.28
00001712366	\$7,318.96
00001542757	\$2,591.12
00001664137	\$11,846.56
00001430683	\$6,346.56
00001625611	\$4,577.44
00001473550	\$7,318.96
00001539875	\$3,067.68
00001703315	\$4,231.04
00001634227	\$2,112.00
00001597040	\$3,807.76
00001642606	\$3,596.56
00001587245	\$2,249.60
00001741286	\$4,442.24
00001541637	\$5,923.28
00001752357	\$3,692.16
00001780321	\$2,500.00
00001721266	\$4,653.44
00001632351	\$1,903.44
00001585668	\$6,346.56
00001323154	\$4,294.40
00001323155	\$3,553.44
00001732156	\$3,596.56
00001586788	\$10,576.72
00001570690	\$6,768.96
00001814226	\$1,320.00

Employee ID #	Amount Owning
00001707827	\$2,750.00
00001539017	\$3,892.24
00001475008	\$4,018.96
00001323162	\$4,950.00
00001776807	\$5,076.72
00001753774	\$7,784.48
00001538654	\$2,538.80
00001559628	\$4,653.44
00001702977	\$6,346.56
00001542816	\$6,346.56
00001650261	\$3,807.76
00001804173	\$240.00
00001323169	\$610.50
00001619966	\$5,923.28
00001660443	\$3,596.56
00001539866	\$7,615.52
00001792184	\$2,385.60
00001465497	\$5,076.72
00001475003	\$3,490.08
00001548180	\$2,000.00
00001646397	\$5,711.20
00001466999	\$5,711.20
TOTAL:	\$237,534.95

EXHIBIT 2

PROPOSED ORDER

UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

In re

Peak Web LLC,

Debtor.

Case No. 16-32311-pcm11

**ORDER GRANTING DEBTOR'S
MOTION FOR ORDER AUTHORIZING
PAYMENT OF PRE-PETITION WAGES,
SALARIES, COMPENSATION,
EXPENSES, BENEFITS, AND RELATED
TAXES, AND TO CONTINUE
EMPLOYEE BENEFITS POST-
PETITION**

THIS MATTER having come before the Court upon Debtor's Motion for Order Authorizing Payment of Pre-Petition Wages, Salaries, Compensation, Expenses, Benefits, and Related Taxes, and to Continue Employee Benefits Post-Petition (the "Motion") [ECF No. ____]; a hearing having been held before the Court; and the Court being duly advised in the premises and finding good cause; now, therefore;

IT IS HEREBY ORDERED that:

1. Debtor's Motion is granted;
2. Debtor is authorized to pay to its employees the pre-petition amounts due in the approximate sums as set forth on **Exhibit 1** and to (a) pay incurred pre-petition wages,

Page 1 of 3 - ORDER GRANTING DEBTOR'S MOTION FOR ORDER AUTHORIZING PAYMENT OF PRE PETITION WAGES, SALARIES, COMPENSATION, EXPENSES, BENEFITS, AND RELATED TAXES, AND TO CONTINUE EMPLOYEE BENEFITS POST-PETITION

TONKON TORP LLP
888 SW Fifth Avenue, Suite 1600
Portland, Oregon 97204
503-221-1440

salaries, reimbursable employee business expenses, employee medical co-payments, commissions, and other compensation on the regularly-scheduled post-petition pay dates; (b) pay any and all local, state, and federal withholding and payroll-related taxes relating to pre-petition periods, including, but not limited to, all pre-petition withholding taxes, social security taxes, Medicare taxes, and unemployment taxes; (c) pay all court-ordered wage garnishments, including, but not limited to, child support and tax garnishments; (d) make accrued pre-petition contributions or payments directly on account of employee benefits; (e) continue to honor, and pay as and when appropriate, earned but unused vacation and other benefits accrued pre-petition; and (f) continue existing employee benefits post-petition; provided, however, that with respect to pre-petition obligations, Debtor will not pay, with respect to any individual, more than the \$12,475 priority amount provided by 11 U.S.C. §§ 507(a)(4) and (a)(5);

3. The requirements of Bankruptcy Rule 6003(b) have been satisfied with respect to the payments authorized by this Order; and

4. Pursuant to Bankruptcy Rule 6004(h), this Order shall be immediately effective and enforceable upon its entry.

#

I certify that I have complied with the requirements of LBR 9021-1(a).

Presented by:

TONKON TORP LLP

By _____
Timothy J. Conway, OSB No. 851752
Ava L. Schoen, OSB No. 044072
888 S.W. Fifth Avenue, Suite 1600
Portland, OR 97204-2099
Telephone: 503-221-1440
Facsimile: 503-274-8779
E-mail: tim.conway@tonkon.com
ava.schoen@tonkon.com
Attorneys for Debtor

cc: List of Interested Parties

EXHIBIT 1

APPROXIMATE AMOUNTS TO BE PAID EACH INDIVIDUAL

EXHIBIT 1
APPROXIMATE AMOUNTS TO BE PAID EACH INDIVIDUAL

Employee ID #	Amount Owing
00001606130	\$4,442.24
00001543941	\$5,076.72
00001338293	\$4,231.04
00001654846	\$4,700.05
00001721409	\$5,923.28
00001712366	\$7,318.96
00001542757	\$2,591.12
00001664137	\$11,846.56
00001430683	\$6,346.56
00001625611	\$4,577.44
00001473550	\$7,318.96
00001539875	\$3,067.68
00001703315	\$4,231.04
00001634227	\$2,112.00
00001597040	\$3,807.76
00001642606	\$3,596.56
00001587245	\$2,249.60
00001741286	\$4,442.24
00001541637	\$5,923.28
00001752357	\$3,692.16
00001780321	\$2,500.00
00001721266	\$4,653.44
00001632351	\$1,903.44
00001585668	\$6,346.56
00001323154	\$4,294.40
00001323155	\$3,553.44
00001732156	\$3,596.56
00001586788	\$10,576.72

Employee ID #	Amount Owning
00001570690	\$6,768.96
00001814226	\$1,320.00
00001707827	\$2,750.00
00001539017	\$3,892.24
00001475008	\$4,018.96
00001323162	\$4,950.00
00001776807	\$5,076.72
00001753774	\$7,784.48
00001538654	\$2,538.80
00001559628	\$4,653.44
00001702977	\$6,346.56
00001542816	\$6,346.56
00001650261	\$3,807.76
00001804173	\$240.00
00001323169	\$610.50
00001619966	\$5,923.28
00001660443	\$3,596.56
00001539866	\$7,615.52
00001792184	\$2,385.60
00001465497	\$5,076.72
00001475003	\$3,490.08
00001548180	\$2,000.00
00001646397	\$5,711.20
00001466999	\$5,711.20
TOTAL:	\$237,534.95

038470/00001/7275233v1